

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 7/10/02 Item 4.d.

File Number
PDSH 02-031

Application Type
Appeal of the Director's Decision to
Approve a Planned Development Permit

Council District 6

Planning Area
West Valley

Assessor's Parcel Number(s)
Various

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Susie Pineda

Location: Southeast corner of Stevens Creek and South Winchester Boulevards (Santana Row)

Gross Acreage: 40.79

Net Acreage: 40.79

Net Density: 29.59 DU/A

Existing Zoning: A(PD) Planned Development Existing Use: Vacant

Proposed Zoning: A(PD) Planned
Development

Proposed Use: Mixed Use/Commercial Residential

GENERAL PLAN

Completed by: SP

Land Use/Transportation Diagram Designation
Regional Commercial and General Commercial

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SP

North: Retail Mall

City of Santa Clara and CG Commercial

East: Commercial and Residential

CN, CG Commercial and A(PD) Planned
Development

South: Office/Commercial and Residential

CG Commercial and RM Residence

West: Commercial and Residential

CN, CG Commercial and A(PD) Planned
Development

ENVIRONMENTAL STATUS

Completed by: SP

☒ Environmental Impact Report found complete on June 16, 1998
☐ Negative Declaration adopted on January 4, 2001

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by

Annexation Title: Maypark No. 1 and Moorpark No. 3

Date: 2/1/54 and 5/10/56

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Uphold Director's Decision
☐ Approval with Conditions
☐ Denial

Date: _____

Approved by: _____
☐ Action
☒ Recommendation

OWNER/DEVELOPER

ARCHITECT

FRIT San José Town & Country Village, LLC
Attn: Anthony Flanagan
400 South Winchester Boulevard, # 100
San José CA 95128

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: SP

Department of Public Works

None received.

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

See attached Notices of Appeal filed on June 24, 2002; letter from Harry Bunting, dated June 7, 2002; and letter from Katie Dwyer dated June 12, 2002.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The developer, Federal Realty Investment Trust, filed a Planned Development Permit (PDSH02-031) to increase the limit of 80,000 square feet of cumulative gross building area allowed for restaurant, bar and nightclub uses to 95,200 square feet within previously-approved buildings and to allow extended construction hours for the portion of the site located within 500 feet of a residential use. The 40.79 acre site, known as Santana Row, is located on the east side of South Winchester Boulevard, south of Stevens Creek Boulevard.

At its February 27, 2002 public hearing, the Planning Commission reviewed a Planned Development rezoning that addressed the proposed increase in the amount of square footage allowed for restaurant, bar and nightclub uses on site. The Planning Commission voted 6-0-1 (Commissioner Godbolt absent) to recommend that the City Council adopt an ordinance to approve the subject rezoning. The City Council approved the rezoning on March 19, 2002. The Planned Development Permit, currently the subject of the appeal, implements this Planned Development Zoning (see attached staff reports).

The subject Planned Development Permit was considered at the June 12, 2002 Planning Director's Hearing and was approved by the Director of Planning on June 14, 2002 (see attached permit). Two appeals of this permit were filed by residents of properties located within 1000 feet of the project site on June 24, 2002. The Zoning Code specifies that any owner or tenant of property located within 1000 feet of the project site may file an appeal of the Director of Planning's action on a Planned Development Permit within 10 calendar days. When an appeal is filed, the Director's decision is set aside and the appeal is scheduled for a public hearing before the Planning Commission. After considering the staff report and public testimony, the Commission may uphold the Director's decision or reverse or modify that decision.

The Notices of Appeal list the following reasons for the appeal: 1) residents living within 100 yards, 2) new laws pertaining to construction hours, and 3) continuous violations of the Site Permit in the past year (*see attached Notices of Appeal*). These issues are addressed below.

ANALYSIS

1. **Appeal:** *Residents Living within 100 Yards*

Staff Response: Prior permit conditions limit hours of construction on this site to between 7:00 a.m. and 7:00 p.m. Monday through Friday within 500 feet of any residential use. The applicant is proposing to modify this condition so that retail tenant improvements can be constructed within totally-enclosed buildings on a 24-hour basis Monday through Saturday on portions of the site subject to the current limitation. This provision is intended to facilitate completion of tenant improvements in the already-enclosed buildings in time for the anticipated September opening of Phase One. The intent of the one-year timeframe for the extended hours of construction is to limit its applicability to the first phase of construction.

The appellants live to the east of the project site on Redwood and Baywood Avenues. The zoning and General Plan designations for the properties fronting on these streets have been commercial for a number of years; however legal non-conforming single-family residential uses remain on both streets. These residences are located within 500 feet of buildings under construction on Santana Row that are proposed to be subject to the extended construction hours for interior retail tenant improvements. In order to ensure that the proposal does not cause undue disturbance of neighboring residents or create a public nuisance, staff has worked closely with the applicant to develop detailed conditions to govern retail tenant construction during the extended hours. Condition No. 43 of the draft permit includes the following limitations:

- Access and deliveries to tenant spaces during hours of extended construction shall be limited to use of the Winchester Avenue driveways. Until the opening of the first phase of commercial buildings along both sides of Santana Row, temporary barriers shall be installed during hours of extended construction to prevent on-site access to streets and driveways that extend east of Santana Row.
- Access or egress shall not occur from the rear (easterly) doors of Buildings 4 and 6 during hours of extended construction.
- Exterior lighting is not permitted on the east side of Building 4 during hours of extended construction.
- An on-site supervisor shall oversee all construction during extended construction hours to ensure compliance with the conditions of this Permit. The phone number of the on-site supervisor shall be posted at the entrance to the site, at the management office and shall be forwarded to the Director of Planning.
- Noise from the proposed construction shall not create a public nuisance for nearby residents or businesses.
- The construction space must be enclosed with either a façade or barricade and doors shall be open only for the purpose of access to the space.
- Tenant façade improvements, demolition work or high noise-producing work shall not occur during extended construction hours.

In addition to the proposed changes to hours of construction for retail tenant improvements, the permit would allow the Director of Planning to approve with a Permit Adjustment extended construction hours for non-retail improvements within a totally enclosed building and/or Sunday construction hours for interior retail tenant improvements. Any such permit would be subject to the conditions described above and would include additional conditions as necessary to prevent the construction hours from creating a public nuisance. Any such extended construction hours would be limited to one year from the approval date of this proposed Planned Development Permit.

Staff believes that the conditions incorporated into the permit and agreed to by the applicant are sufficient to ensure that the extended construction hours will not unduly disturb nearby residents. If a serious compliance problem did occur, the Director of Planning would bring the matter to the Planning Commission through the Notice of Non-Compliance/Order to Show Cause procedure and ultimately the Planning Commission would have the power to modify or revoke the permit if it determined that permit violations warranted such an action.

2. **Appeal:** *New Laws Pertaining to Construction Hours*

Staff Response: The appeal is unclear as to what new laws are referenced here. Section 20.100.450 of the Zoning Code limits construction to Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise provided for in a permit. The City Council recently approved an ordinance that restructures and clarifies this section of the Code providing for administrative fines for violations of construction hours. Neither the original nor the revised ordinance limit the ability of the Director of Planning or the Commission to establish construction hours through a permit condition.

3. **Appeal:** *Continuous Violations of the Site Permit in the Past Year*

Staff Response: Planning and Code Enforcement staff have received a number of complaints from residents of Baywood and Redwood Avenues regarding construction at the Santana Row site over the past year. Staff has investigated each of these complaints. Many were not confirmed as violations and those that were confirmed were promptly corrected. Federal Realty has been responsive to the concerns of staff and the neighborhood and has worked effectively to minimize disturbances associated with one of the largest construction projects in the country.

Conclusion

The construction hour conditions included in the draft permit have been carefully crafted to avoid disturbance of adjacent residential uses. Extended construction hours for work within entirely enclosed buildings has been successfully implemented for other projects with proximate residential uses and staff believes that they can be successfully implemented here. Should unexpected problems arise, the Zoning Code provides adequate means for addressing persistent permit violations.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to approve the proposed Planned Development Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Regional Commercial with Intensification Corridor Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A(PD) Planned Development Zoning District (File No. PDCSH 02-01-005).
3. The project site is approximately 40.79 gross acres.
4. A Final EIR entitled, "Town & Country Village," was certified on June 16, 1998, by the City of San José City Council and subsequently addended on January 16, 2001, and measures were included in the project to mitigate negative effects on adjacent properties to an acceptable level.
5. The site is surrounded by (1) retail mall uses to the north; (2) commercial and residential uses to the east; (3) office/commercial uses to the south; and (4) commercial to the west.
6. The Planned Development Permit was approved by the Director of Planning on June 12, 2002 to allow an increase in the amount of commercial area that can be occupied by restaurant, bar and nightclub uses from 80,000 to 95,200 square feet and temporary expansion of hours of construction within 500 feet of residential uses. Prior permit conditions limit hours of construction on this site to between 7:00 a.m. and 7:00 p.m. Monday through Friday within 500 feet of any residential use. The applicant is proposing to modify this condition so that retail tenant improvements can be constructed within totally enclosed buildings on a 24-hour basis Monday through Saturday on portions of the site subject to the current limitation. This provision is intended to facilitate completion of tenant improvements in the already-enclosed buildings in time for the anticipated September opening of Phase One. The intent of the one-year timeframe for the extended hours of construction was to limit its applicability to the first phase of construction.
7. In addition to the proposed changes to hours of construction for retail tenant improvements, the permit would allow the Director of Planning to approve with a Permit Adjustment extended construction hours for non-retail improvements within a totally enclosed building and/or Sunday construction hours for interior retail tenant improvements. Any such permit would be subject to the conditions described above and would include additional conditions as necessary to prevent the construction hours from creating a public nuisance. Any such extended construction hours would be limited to one year from the approval date of this proposed Planned Development Permit.
8. The appellants, Ms. Dwyer and Mr. Cuevas, indicated the following as reasons for appealing the Planning Director's decision to approve the subject Planned Development Permit: 1) Residents live within one hundred yards of construction; 2), new laws pertaining to construction hours, and 3) continuous violations of permits for the past year.
9. In order to ensure that the proposal does not cause undo disturbance of neighboring residents or create a public nuisance, staff has worked closely with the applicant to develop detailed conditions to govern retail tenant construction during the extended hours.

10. Section 20.100.450 of the Zoning Code limits construction to Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m. unless otherwise provided for in a permit. The City Council recently approved an ordinance that restructures and clarifies this section of the Code providing for administrative fines for violations of construction hours. Neither the original nor the revised ordinance limit in any way the ability of the Director of Planning or the Commission to establish construction hours through a permit condition.
11. Planning and Code Enforcement staff have received a number of complaints from residents of Baywood and Redwood Avenues regarding construction at the Santana Row site over the past year. Staff has investigated each of these complaints. Many were not confirmed as violations and those that were confirmed were promptly corrected. Federal Realty has been responsive to the concerns of staff and the neighborhood and has worked effectively to minimize disturbances.

FINDINGS

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The Master Planned Development Permit, as issued, furthers the policies of the General Plan in that:
 - a. The zoning for the property is consistent with the General Plan Land Use designation of Regional Commercial with Intensification Corridor Overlay.
2. The Master Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property in that:
 - a. This Master Planned Development Permit will allow the construction of 680,000 square feet of commercial space, 404 hotel rooms, 1,201 residential units and parking lots, and to allow an increase in the amount of commercial space that can be occupied by restaurant, bar and nightclub uses from 80,000 to 95,200 square feet of building area.
3. The environmental impacts of the project, including, but not limited to noise, vibration, dust drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The environmental impacts of this project were addressed by a Final EIR entitled, "Town & Country Village," and certified on June 16, 1998, by the City of San José City Council and subsequently addended on January 16, 2001, and measures were included in the project to mitigate negative effects on adjacent properties to an acceptable level.
4. The interrelationship between the orientation, location and mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious in that:
 - a. The architectural design of the proposed building is consistent throughout the proposed development. Additional permits are required to address the detailed design of individual buildings.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
3. **Permit Expiration.** This Master Planned Development Permit shall automatically expire 30 months from and after the date of issuance hereof by said Director, if within such 30-month period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
4. **Conformance with Plans.** Construction and development shall conform to approved Planned Development plans entitled, "Santana Row," dated May 9, 2002, on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
5. **Revocation.** This Planned Development Permit is subject to revocation for violation of any of its provisions or conditions.
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.*
8. **Master Planned Development Permit.** This Planned Development Permit can only be implemented in conjunction with the full and complete implementation of the previously approved Master Planned Development Permit, File No. PDSH01-10-101.
9. **Previous Permit Conditions.** All of the conditions of the previously approved Master Planned Development Permit, File No. PDSH01-10-101 shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted by this PD Permit.

10. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
11. **Decorative Fountain Operation.** The fountain shown on the approved plan set shall be fully lined and be designed to recirculate, and not mist, the water.
12. **Lighting.** Building and tenant light fixtures shall be consistent with the theme for the overall Town & Country/Santana Row Project and are subject to separate review and approval, to the satisfaction of the Director of Planning.
13. **Color.** All exterior colors shall be consistent with the overall theme for the Town & Country/Santana Row Project/Color Palette, on file in the Planning Department.
14. **Sign Program.** All signs shall be consistent with a Master Sign Program approved by the Director of Planning for the Town & Country/Santana Row Project, and are subject to separate review and approval to the satisfaction of the Director of Planning. The preexisting sign located on the former Courtesy Chevrolet site along the Stevens Creek Boulevard frontage is approved.
15. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
16. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Master Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
17. **Storefront Design Guidelines.** All storefronts shall be consistent with the Storefront Design Guidelines prepared for the overall Town & Country/Santana Row Project entitled, Santana Row Drawing Submittal and Review/Approval Process, dated June 22, 2000, prepared by Federal Realty Investment Trust, and are subject to separate permitting to the satisfaction of the Director of Planning.
18. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-6815) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
 - b. *Inlet Filters.* The project developer shall install inlet filters in all on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:

- 1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
 - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
 - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
 - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
 - 5) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
 - 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
 - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
- c. *Reclaimed Water Irrigation Systems*. Pursuant to San José Municipal Code, Section 15.10.480, irrigation systems for all landscaped areas in excess of 10,000 square feet, unless specifically exempted by the Director of Planning, shall be designed and installed to allow the current and future use of reclaimed water to the satisfaction of the Director of Public Works.
- d. *Storm Water Stenciling*. All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
19. **Building Clearance for Issuing Permits**. Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Americans With Disabilities Act*. The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - b. *Police Issues*. The following requirements shall be provided to the satisfaction of the Chief of Police:
 - 1) *Address Numbers*. All buildings shall be clearly marked by address numbers.
 - 2) *Lighting*. All exterior doors shall be lighted.
 - 3) *Exterior Doors*. All exterior doors that alarmed shall be identified by numbers and zone.

- 4) *Security Hardware.* The project developer shall install adequate security hardware to the satisfaction of the Chief of Police and Chief Building Official.
 - 5) *Safety/Security Plan.* Prior to issuance of Building Permits, the project developer shall prepare a safety/security plan for the project (including applicable details/measures), to the satisfaction of the Chief Building Official and the Chief of both the Fire and Police Departments.
- c. *Construction Plans.* This permit file number, PDSH 02-031, shall be printed on all construction plans submitted to the Building Division.
20. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 21. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
 22. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation to be retained in this project. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on site. All trees to be saved shall be protected by fencing of chain link, hog wire, 4-strand barbed wire or other fencing approved by the Director of Planning prior to issuance of a Grading Permit or removal of any tree. The fence shall occur at the dripline in all cases and shall remain during construction. Tree masses to be saved may be protected with a fence surrounding the dripline of the entire mass. All sensitive plant and wildlife habitat areas to be preserved and protected shall be posted prior to issuance of a Grading Permit with signs stating that no disturbance, including grading, storage of equipment, vehicles or material, or other disruptions, is allowed. Fencing may be required for areas subject to direct impact, such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.
 23. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
 24. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
 25. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.

26. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
27. **Fire Flow.** Required fire flow for the site is as approved in writing by the Fire Chief.
28. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
29. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
30. **Project Address.** The applicant shall provide an address system, including named private streets, acceptable to the Police and Fire Departments and Director of Planning, prior to occupancy of any building.
31. **Street Number Visibility.** Street numbers of the buildings shall be easily visible at all times, day and night.
32. **Balcony Appearance.** The storage of materials or the placement of furnishings in or on balconies, patios, and terraces requires approval by the community management where the storage/furnishings effect the exterior appearance of the buildings. Installation of window air-conditioners, screening, window tint or patio screens is strictly prohibited. The use of exterior black-out material or hanging display-window decorations is prohibited. Balconies designed on the project plans for "limited use" are restricted to decorative plant use only by the resident and are not designed for habitation. On these balconies, placement of potted plants with drip dishes is allowed. Furniture or other materials is prohibited on limited use balconies. Patios and terraces may be furnished with approved outdoor furniture. Written approval by the community management for patio and terrace furnishings is required. A list of approved furnishings is available for each Santana Row building at the management office. If the project developers choose to allow satellite or similar facilities in the project on balconies or terraces, they must be placed and/or mounted below the top of the adjoining railing, so that the dish does not extend above the height of the railing.
33. **Shared and/or Alternating Parking.** Parking within this project is designed to be shared and/or alternating parking within the overall Town & Country/Santana Row Project (the area covered by Master Planned Development Permit File No. PDSH 98-11-074). Parking reserved for a specific tenant or parcel is allowed only with approval of the community management.
34. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.
35. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
36. **Roof Equipment.** All roof equipment shall be screened from view.

37. **Nuisance.** The uses on this site shall not create a public or private nuisance.
38. **Planned Development Zoning.** Use of this site shall conform to the use requirements of Planned Development Zoning File No. PDCSH 02-01-005.
39. **Transportation Management Plan.** Use of this site shall conform to the Federal Realty Investment Trust Transportation Management Plan, dated June 23, 2000.
40. **Generator Emissions.** Applicant shall make use of best available technology to mitigate potential air quality impacts associated with operation of the generator. These shall include a catalyst-based diesel particulate filter (DPF) and very low sulfur content diesel fuel with sulfur contents below 15 ppmw.
41. **Construction Impact Mitigation Measures.** The developer shall ensure that construction impact mitigation measures are implemented throughout the duration of all construction activities associated with this project and related off-site construction work in conformance with Conditions No. 42 and 43 below.
42. **Noise Mitigation.** Construction of all structures by this Permit shall include implementation of the Noise Mitigation Measures identified in the project Noise Report to the satisfaction of the Director of Planning.
43. **Construction Impact Mitigation Measures.** The following replaces condition #9 in Planned Development Permit, PDASH00-01-085. The developer shall ensure that the following construction impact mitigation measures are implemented with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City.
- a. *Equipment.* Mitigation of construction phase noise at the site shall include the use of quiet or "new technology" equipment, particularly with improved exhaust mufflers. All internal combustion engines used at the project site shall be equipped with the type of muffler recommended by the equipment manufacturer. In addition, all equipment shall be maintained in good mechanical condition so as to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
 - b. *Construction Hours.* Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday for any on-site work within 500 feet of any residential unit except as allowed in Condition No. 43 (c) of this Permit.
 - c. *Extended Construction Hours.* For one year from the issuance of this Permit, construction shall be allowed as follows:
 - 1) Construction shall be allowed on a 24-hour basis Monday through Saturday for retail tenant improvements within enclosed buildings subject to the following:
 - a) Access and deliveries to tenant spaces during hours of extended construction shall be limited to use of the Winchester driveways. Until the opening of the first phase of commercial buildings along both sides of Santana Row, temporary barriers shall be

- installed during hours of extended construction to prevent on-site access to streets and driveways that extend east of Santana Row.
- b) Access or egress shall not occur from the rear (easterly) doors of Buildings 4 and 6 during hours of extended construction.
 - c) Exterior lighting is not permitted on the east side of Building 4 during hours of extended construction.
 - d) An on-site supervisor shall oversee all construction during extended construction hours to ensure compliance with the conditions of this Permit. The phone number of the on-site supervisor shall be posted at the entrance to the site, at the management office and shall be forwarded to the Director of Planning.
 - e) Noise from the proposed construction shall not create a public nuisance for nearby residents or businesses.
 - f) The construction space must be enclosed with either a façade or barricade and doors shall be open only for the purpose of access to the space.
 - g) Tenant façade improvements, demolition work or high noise-producing work shall not occur during extended construction hours.
- 2) The Director of Planning may approve extended Sunday construction hours for retail tenant improvements with a Permit Adjustment, with conditions to prevent the extended construction hours from creating a public nuisance. Extended construction hours approved pursuant to this provision shall be subject to the requirements of Condition No. 43(c)(1) of this Permit.
- 3) The Director of Planning may approve a Permit Adjustment to allow extended construction hours, for work other than retail tenant improvements, provided that the work occurs within a totally enclosed building and the Director determines that the extended construction hours will not create a public nuisance for adjacent uses. Extended construction hours approved pursuant to this provision shall be subject to the requirements of Condition No. 43(c)(1) of this Permit.
- d. *Fencing.* The site shall be wholly enclosed by security fencing. The gates to the project site shall remain locked during the hours when construction is prohibited, ***except for a 30-minute period immediately preceding and following the above hours of construction.***
 - e. *Plans.* The construction hours shall be printed on all plans for the project used to construct the project.
 - f. *Mitigation Measures.* These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors. In addition, the applicant is responsible to ensure the following occur prior to the issuance of a Building Permit for the project.
 - g. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site.

- h. *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
- i. *Conformance.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
- j. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number PDSH 02-031, City contact and phone number (department and phone number), and shall be displayed on a weatherproof sign posted at each entrance to the project site.